

This letter discusses "shipping and handling" charges and the tax consequence of reward credits. See 86 Ill. Adm. Code 130.401(c). (This is a GIL).

October 31, 2002

Dear Xxxxx:

This letter is in response to your letter dated May 30, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I have a client based in STATE that intends to begin selling and collecting sales tax in Illinois. Prior to printing their sales invoices they wish to confirm the appropriate tax collection procedures for your state.

The company is a direct sales company. That is, they sell product through independent reps through a 'party plan'. I will provide an example of each sale circumstance and ask that you provide a written response as to the correct base to which sales tax applies.

Example 1 :

Product sold to customer at retail, payment collected and retained by representative, representative remits to company the wholesale price for product (keeping the mark-up from wholesale to retail).

Example 2:

Product sold to hostess at discount from retail, discount established by the volume of party sales, hostess remits discounted payment to representative and representative forwards payment to company (representative keeps no portion of hostess sale). Is the tax based on the retail amount or the discounted price that the hostess actually paid?

Example 3:

Hostess is entitled to free product based on volume of party sales, remits no payment to representative and no money is forwarded to company. Is there any tax on this free product?

Finally, are shipping and handling charges taxable in your state?

Should you need clarification on any of these questions, please feel free to call me.

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in the business of selling tangible personal property at retail. The rate is 6.25% of gross receipts for most items, and a lower rate of 1% for qualifying food, drugs and medical appliances.

We have enclosed 86 Ill. Adm. Code 130.550, which is the Department's regulation that covers the Filing of Returns for Retailers by Suppliers Under Certain Circumstances. This regulation explains how manufacturers, importers or wholesalers can enter into an "agency agreement" with the Department, whereby they register, file returns and remit Retailers' Occupation Tax on behalf of their local distributors. The Department provides a standard agreement, which is enclosed, for use in these situations. As the regulation explains, retailers that do not wish to participate may opt out of the agreement and register and remit tax themselves. To obtain a copy of the form necessary to obtain approval of such arrangements, suppliers can call the Department's Taxpayer Information Division at the number listed below.

In regard to Example 1, the base for sales tax on a retail sale of tangible personal property to a customer would be the amount of gross receipts received from the customer for the sale. For example, if an item is sold to the customer for \$20.00, the tax base would be \$20.00, even though the representative remits only the wholesale price amount to the company.

In regard to Examples 2 and 3, the Department's regulation at 86 Ill. Adm. Code 130.401(c) may provide some guidance. Section 130.401(c) provides that "[r]eward credits, sometimes referred to as hostess dollars, awarded to a host or hostess for sponsoring a party for friends at which sellers may show and solicit orders for their merchandise, and which are awarded based upon the amount of sales generated at the party, are included in gross receipts subject to tax when applied toward purchases of the seller's merchandise. The value of the reward credit equals the dollar amount credited when the reward credit is applied."

In regard to shipping and handling charges, as a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always included in gross charges subject to tax. See 86 Ill. Adm. Code 130.410. However, such charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling," as well as delivery or transportation charges in general, are not taxable if it can be shown that they are both separately contracted for and that such charges are actually reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the charges are subject to tax. As indicated above, charges termed "delivery" or "transportation" charges follow the same principle.

The best evidence that shipping and handling or delivery charges have been contracted for separately by purchasers and retailers are separate contracts for shipping and handling or delivery. However, documentation that demonstrates that purchasers had the option of taking delivery of the property, at the sellers' location for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. If retailers charge customers shipping and handling or delivery charges that exceed the retailers' cost of providing the transportation or delivery, the excess amount is subject to tax.

Please be advised that where retailers send merchandise to party hosts or hostesses who then distribute the merchandise to purchasers, shipping and handling charges are generally considered part of the retailer's costs of doing business and are subject to tax. Please refer to Section 130.410.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.